

EUROPEAN CONVENTION ON HUMAN RIGHTS

CHARTIER CASE

Strasbourg

1984

APPLICATION 9044/80

MICHEL CHARTIER

against

ITALY

- I. Report of the European Commission of Human Rights adopted on 8 December 1982 (article 31 of the Convention)..... page 1

- II. Resolution DH (83) 12 of the Committee of Ministers adopted on 23 September 1983 (article 32 of the Convention)..... page 25

This publication contains the report of the European Commission of Human Rights drawn up in accordance with Article 31 of the Convention for the Protection of Human Rights and Fundamental Freedoms, relating to the application No. 9044/80 lodged with the Commission by Michel Chartier against Italy.

The report was transmitted to the Committee of Ministers on 14 February 1983.

As the case was not referred to the European Court of Human Rights, it was for the Committee of Ministers to decide, under the provisions of Article 32 paragraph 1 of the Convention, "whether there has been a violation of the Convention".

The decision of the Committee of Ministers was taken by Resolution DH (83) 12 of 23 September 1983, the text of which is reproduced on page 25 of the present publication.

The Committee of Ministers also authorised publication of the Commission's report on this case.

I. REPORT OF THE COMMISSION.

I. INTRODUCTION

Brief outline of the facts of the case and the applicant's complaints

1. The following is a summary of the facts of the case as presented by the parties to the European Commission of Human Rights.
2. The applicant, Michel CHARTIER, is a French national born in 1947. He is present detained in an Italian prison, in Parma, at a specialised centre for handicapped prisoners (1).
3. The applicant has been in custody since 2 October 1976, the day on which he was arrested. On 11 December 1979 he was convicted by the Turin Assize Court of the murder of a police officer as well as other offences, a conviction which was confirmed by the Turin Court of Appeal on 2 July 1981. He was sentenced to 29 years' rigorous imprisonment.

An appeal by the applicant to the Court of Cassation against his conviction is still pending.

4. In his application to the Commission, the applicant, who suffers from hereditary obesity complicated by many other ailments such as diabetes and respiratory and cardiovascular disorders, complains of his detention and claims that, in view of his state of health, he ought to be released so that he can receive the care which his state of health necessitates. He submits that the authorities' rejection of his request for release constitutes inhuman treatment.

Proceedings before the Commission

5. Mr Chartier's application was lodged on 19 April 1979 and registered on 20 July 1980 under file No. 9044/80.

On 16 October 1980 the Commission decided to invite the respondent Government to make observations on the application's admissibility and merits from the point of view of Article 3 of the Convention. It also asked the Government for some information as to the facts of the case.

6. On 17 December 1981 the Commission declared the application admissible with regard to the issue relating to Article 3 of the Convention.

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(1) "Casa di reclusione per minorati fisici".

7. On 13 May 1982 the parties were invited to present a supplementary memorial on the merits of the application if they saw fit. The Government presented observations on 3 and 17 June 1982.

8. The applicant presented his application himself. During the proceedings the Commission decided, on 16 July 1981, to grant the applicant free legal aid. The applicant has been represented since that date by Mr Tartaglino, a lawyer in Turin.

The respondent Government has been represented by its Agent, Mr Arnaldo Squillante, Head of the Diplomatic Disputes Department in the Italian Ministry of Foreign Affairs.

9. After declaring the application admissible, the Commission, in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter. In view of the parties' attitudes, however, the Commission considers that there was no basis on which such a settlement could be effected.

The present report

10. The present report was drawn up by the Commission in accordance with Article 31 of the Convention, after deliberations and votes in plenary session, the following members being present:

C A NØRGAARD, President
G SPERDUTI, First Vice-President
J A FROWEIN, Second Vice-President
F ERMACORA
J E S FAWCETT
G JORUNDSSON
G TENEKIDES
S TRECHSEL
B KIERNAN
M MELCHIOR
J A CARRILLO
A S GOZUBUYUK
A WEITZEL
J C SOYER
H G SCHERMERS

11. The text of the report was adopted by the Commission on 8 December 1982 and is now being transmitted to the Committee of Ministers in accordance with Article 31 (2) of the Convention.

12. As no friendly settlement of the case has been reached, the purpose of the report, as provided in Article 31 (1) of the Convention is:

1. to set out the facts, and
2. to state an opinion on whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

13. A chronological synopsis of the proceedings before the Commission and the text of the Commission's decision on the admissibility of the application are attached hereto (Appendices I and II).

14. The full texts of the documents submitted to the Commission are in the Commission's archives and can be made available to the Committee of Ministers if required.

II. ESTABLISHMENT OF THE FACTS

On the whole, the facts of the case are not disputed by the parties.

A. The applicant's legal position

15. The applicant was convicted by the Turin Court of Appeal on 2 July 1981. He then appealed to the Court of Cassation, and his appeal is still pending.

As, therefore, his conviction is not yet final, he is still, under Italian law, in provisional detention.

16. Article 1, paragraph 1, of the Act of 22 May 1975 precludes provisional release in the case of murder, the crime of which the applicant was convicted (1).

However, the last paragraph of the same article provides that even in the case of murder "provisional release may be granted to someone whose state of health is particularly grave and who cannot be given the necessary care while in detention" (2).

17. The applicant made one request for release, which was rejected by the Turin Assize Court on 29 May 1980 on the ground that his being in detention did not prevent him from receiving appropriate care. In reaching this decision, the court noted that the applicant was suffering from hormone disorders requiring appropriate therapeutic treatment and that he could receive such treatment from a specialised service.

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- (1) Article 1, paragraph 1: "Per i reati commessi successivamente all' entrata in vigore della presente legge (..), la libert  provvisoria non   ammessa relativamente all'omicidio doloso, consumato o tentato, previsto dall'art. 575 del Codice penale ... "
- (2) Article 1, last paragraph: "Anche nei casi previsti nel primo e secondo comma puo' essere concessa la libert  provvisoria se trattasi di persona la quale si trovi in condizioni di salute particolarmente gravi che non consentano le cure necessarie nello stato di detenzione".

B. Nature of the care received by the applicant during his detention

1. From the date of the applicant's arrest (2 October 1976) to his transfer to a prison for physically handicapped persons, at Parma (27 January 1979)

18. On 30 October 1976 the Turin investigating judge appointed as expert a surgeon specialising in forensic medicine, orthopaedics and traumatology to examine the applicant in order to establish his state of health with a view to his undergoing treatment or if necessary specific tests.

According to the expert's report, dated 6 November 1976, the applicant, who weighed 130 kg (height: 1.65 m), was suffering from serious obesity, probably of endocrine origin.

19. According to the clinical records and other medical reports submitted to the Commission, the applicant has since been subjected to numerous clinical examinations and tests. During this period he was treated at the clinical centre attached to Turin prison as well as in a Turin hospital.

20. The applicant thus underwent medical examinations by surgeons and other specialists, such as heart, tuberculosis and ear, nose and throat specialists, the frequency of which increased from September 1977. Routine medical tests (glycemia, cholesterol, lipids etc) were regularly carried out throughout this period, and drugs were prescribed for the applicant.

21. By 21 October 1977 the applicant's weight had risen to 150 kg. The doctors who had examined him on 21 October, 9 December 1977 and 9 January 1978 asked for him to be hospitalised so that he could be subjected to detailed tests with a view to possible surgical operation.

22. On 11 January 1978, the applicant was transferred to a general hospital, where he underwent various tests. He refused surgery and asked to be discharged from hospital. On 7 March 1978 he returned to the clinical centre.

23. The applicant was again subjected to frequent examinations by doctors and surgeons during 1978. His state of health constantly deteriorated: on 3 May his weight was 161 kg, on 20 December 175 kg. He still showed symptoms of disorders resulting from serious pathological obesity. The surgical operation envisaged entailed considerable risks due to cardio-respiratory insufficiency. On 22 December 1978 the applicant's doctor, emphasising

the seriousness of his general condition, asked for him to be treated at a centre specialising in endocrine diseases and obesity. On 27 January 1979, the applicant was transferred to the prison for physically handicapped persons at Parma (1).

2. From the applicant's transfer to the Parma prison (27 January 1978) to the end of September 1982.

24. At the Prison the applicant was subjected to numerous examinations and tests several times a month. According to his clinical record, he underwent endocrinological examinations. He was also examined by a doctor specialising in this subject, from the Parma Faculty of Medicine. In particular, a strict diet appropriate to the applicant's needs was prescribed for him after detailed chemical analyses.

25. On 5 March 1979 the health director of the Prison asked for the applicant to be hospitalised at a centre specialising in obesity. On 11 April 1979 the Ministry of Justice rejected this request on the ground that the applicant could receive appropriate care at the Prison.

26. On 5 November 1979 the applicant returned to the Turin clinical centre. He then weighed 180 kg. On 9 February 1980 his doctor concluded that his state of health required his urgent admission to a highly specialised centre. On 4 March 1980 the applicant was transferred back to the Prison, where he has been ever since almost continuously.

27. During that time the applicant spent several periods at a specialised clinical centre of the Parma Faculty of Medicine at the request of the Prison health director (in July and December 1980 and in January and February 1981), where he underwent detailed examinations.

28. On 28 November 1980 the applicant's doctor considered that the prison environment was harmful to the applicant because of his obesity, and recommended that the applicant be granted provisional release (2).

(1) Hereinafter referred to as the "Prison"

(2) "Per il detenuto l'ambiente carcerario incide sfavorevolmente sulla sua malattia (obesità). Si esprime parere favorevole per l'accoglimento della sua domanda".

29. On 13 May 1981 the applicant's doctor, after examining the various disorders from which the applicant (whose weight had decreased to 167 kg) was suffering, pointed out that the treatment he was being given (diet and drugs) was difficult to administer while he was in detention and could not clinically solve the problems posed by the applicant's state of health. A surgical operation would be highly risky. The doctor also stated that "the prognosis with this type of disease is negative" (1).

30. On 7 September 1981 the doctor treating the applicant at the Prison expressed the view that his state of health was not compatible with his being kept in detention, especially with regard to the administration (which was proving extremely difficult) of a rigid diet which, in the present case, seemed to be the main therapy (2).

31. In January 1982 the applicant was examined at his own request by a doctor of his own choosing, a professor of forensic medicine at the University of Turin. After summarising the applicant's many disorders, the doctor concluded that, despite the care he was receiving, his state of health showed no significant improvement but was indeed tending to deteriorate; that intensive care was necessary; and that the applicant ought to have been hospitalised in a suitable clinical centre, such as, in the case of the French hospital system, the Marseilles Clinic of Endocrinology or La Pitie University Clinic in Paris.

32. From 28 May to 2 June 1982 the applicant was an in-patient at Parma General Hospital, in the service specialising in blood-circulation disorders and diabetes. The clinical report still mentioned obesity complicated by diabetes and cardiorespiratory insufficiency. It stated that the only suitable treatment was strict dieting accompanied by physical exercise and the administration of drugs.

33. In July 1982 the applicant was transferred to the infirmary in Perugia prison. He returned to the Prison on 25 August 1982.

(1) "La prognosi in questo tipo di malattia è pertanto infausta nel tempo".

(2) "La condizioni di salute, come già altre volte affermato non sono compatibili con il regime detentivo in relazione soprattutto alla estreme difficoltà di attuazione di una dieta rigid che attualmente nel caso specifico è il provvedimento terapeutico più importante".

C. The applicant's general state of health

34. In the light of the medical reports and clinical records, the applicant's state of health may be summed up as follows:

The applicant is suffering from serious obesity of hereditary origin as well as constitutional respiratory insufficiency, also hereditary, and chronic bronchial disorders. There is also a morphological situation of malfunctioning of the myocardium, combined with high blood-pressure, venous insufficiency, pancreatic diabetes and hepatomegaly. His general state is influenced by dysmetabolic, respiratory and cardiovascular factors.

His weight seems to have become stable at around 170 kg.

35. The treatment prescribed is based on digitalin, hepatoprotectives, anti-hypertensives and diuretics together with appropriate dieting. This treatment is being administered by the doctors of the Prison where the applicant is being kept.

III. SUBMISSIONS OF THE PARTIES

A. The applicant

36. The applicant maintains, in general terms, that because of his state of health he is unfit for detention. He points out that his weight increased considerably after his arrest, then stabilised at an alarming and intolerable level.

The various forms of "maintenance therapy" he received and is still receiving in the Prison have proved inadequate.

37. In support of this argument he states that as early as 5 March 1979 his doctor recommended transferring him to a centre specialising in obesity, as the Prison was unable to provide him with the necessary care or carry out the appropriate tests.

However, he observes, there is no specialised centre for obese prisoners.

He also points out that his doctor asserted, in particular on 3 May 1981, that the therapy provided, consisting of a diet, was difficult to administer to someone in detention and, in any event, was not capable of solving the medical problems raised by his condition.

38. He reiterates his request to be provisionally released so that he can be treated in a specialised clinic.

B. The Government

39. The Government submits that the applicant has constantly received the care required by his state of health and that the care has been properly provided by general practitioners and specialists both in prison and in highly specialised hospitals.

40. The Government emphasises the hereditary and chronic nature of the applicant's disorders and points out that the doctors at the Parma centre for obese persons envisaged surgical therapy for him.

This therapy, consisting of an intestinal by-pass operation, inevitably entails some uncertainty and risks and cannot be carried out without the patient's consent.

41. Furthermore, the prognosis of the doctors who examined and treated the applicant is unanimous: there is little likelihood of an abatement of the disorders, which are connected with non-modifiable hereditary and constitutional factors. Specific drug therapy, on the other hand, requires no hospitalisation and can administered in the Prison where the applicant is being held.

42. The Italian authorities have had the applicant hospitalised whenever deemed necessary at the best clinical centre in Italy for prisoners.

Conscious of his state of health, they are following his progress with all due care.

43. The Government states that the Italian authorities undertake to have the applicant hospitalised at specialised centres or clinics whenever it is desirable.

44. The Government concludes that the applicant is receiving the best possible care, especially bearing in mind that his disorders are of a hereditary nature.

In the present case, therefore, there has not been any treatment which could be regarded as contrary to Article 3 of the Convention.

IV. OPINION OF THE COMMISSION

45. The Commission is required to express an opinion on the following question:

Did the applicant's detention constitute and does it constitute, in view of his state of health, inhuman or degrading treatment within the meaning of Article 3 of the Convention?

46. Article 3 of the Convention provides that:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

47. The Commission observes at the outset that the applicant is being kept in detention within the framework of a criminal procedure which resulted in his being sentenced - though not yet finally - to a term of imprisonment.

It recalls in this connection that a lawfully passed prison sentence may raise an issue from the standpoint of Article 3, especially by virtue of the way in which it is being enforced (decision on the admissibility of Application No. 7994/77, *Kotälla v. the Netherlands*, Decisions and Reports 14, pp. 238 et seq).

48. The applicant alleges that the Italian authorities' refusal to grant him provisional release so that he may receive treatment in specialised clinics constitutes inhuman treatment.

The Government maintains that the applicant is being given proper care and that his state of health is receiving all due attention.

49. The Commission observes that the seriousness of the applicant's state of health cannot be disputed. It is due to many disorders associated with hereditary obesity which necessitate care as well as treatment under continuous medical supervision.

It emphasises that as soon as he was arrested the applicant was given numerous forms of medical treatment and that his state of health was constantly supervised by the health authorities responsible for him. As may be seen from the medical records and reports submitted to the Commission, he was examined by a series of general practitioners and specialists and was taken for detailed tests to specialised services attached to general hospitals.

50. Since January 1979 the applicant has been kept in a specialised prison equipped with a medical service. Medical examinations have taken place regularly, followed by examinations in a clinical centre of the University of Parma.

He is receiving the prescribed therapy and care in the Prison.

51. The Commission has considered all the material submitted to it on this subject, particularly the medical reports and records.

In the light of the information therein, it considers that there is nothing to suggest that the applicant has not been provided with the medical care necessitated by his state of health. The last report, dated 5 June 1982, describes his state of health as stable.

52. In support of his allegations, the applicant refers to various medical reports which appear to cast doubt on the compatibility of his state of health with detention.

53. It is true that detention does, as such, inevitably affect prisoners suffering from serious disorders of the kind observed in the case of the applicant.

The Commission acknowledges that in particularly serious cases situations may arise where the proper administration of criminal justice requires remedies to be taken in the form of humanitarian measures.

Italian legislation, for its part, sensitive to this requirement, as it expressly provides that even where provisional release is not allowed it may nevertheless be granted "to someone whose state of health is particularly serious and who cannot be given the necessary care while in detention" (Article 1, last paragraph, of the Act of 22 May 1975).

54. The Commission further observes that the seriousness of the applicant's state of health is due to various disorders, some of which are hereditary or chronic, such as obesity. It is not the direct consequence of his being detained.

55. Nevertheless, because of his state of health, the applicant's detention is undoubtedly a particularly painful ordeal.

Accordingly, the Commission welcomes the undertaking it has received from the Italian Government that the Italian authorities will not hesitate to have the applicant hospitalised "in specialised centres or clinics whenever that is desirable" (letter of 3 June 1982).

Furthermore, the Commission would appreciate any measure the Italian authorities could take vis-à-vis the applicant in order to alleviate the effects of his detention or to terminate it as soon as circumstances require.

56. After considering all the information at its disposal, the Commission is of the opinion that, although rigorous in its effects, the applicant's detention does not constitute treatment that can be described as inhuman or degrading.

CONCLUSION

57. In the light of the foregoing, the Commission, by 13 votes and 2 abstentions, concludes that there has been no breach of Article 3 of the Convention in the present case.

Secretary to the Commission

President to the Commission

(H C KRUGER)

(C A NØRGAARD)